



MAINE REVENUE SERVICES SALES/EXCISE TAX DIVISION INSTRUCTIONAL BULLETIN NO. 43

REGISTRATION OF OUT-OF-STATE SELLERS

This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains general and specific information of interest as well as interpretations and determinations by Maine Revenue Services regarding issues commonly faced by your business. Portions of the Sales and Use Tax Law referred to in this bulletin can be found at the end of the bulletin in Attachment #1. Also attached are applicable Sales and Use Tax Rules.

Section 1754-B of the Maine law provides for the mandatory Sales and Use Tax registration of out-of-state businesses selling tangible personal property or taxable services whenever a place of business of any kind is located in Maine. Furthermore, registration is required of such businesses in certain situations even if no place of business in Maine exists.

Businesses subject to mandatory registration or wishing to register voluntarily should obtain an "Application for Sales and Use Tax Registration" from Maine Revenue Services. Once registered, the business would collect sales or use tax from its customers and remit the same to Maine Revenue Services

1. ACTIVITIES WHICH REQUIRE REGISTRATION

a. Retail sales are made within Maine. If an out-of-state retailer makes retail sales within Maine by means of one or more salespeople within Maine, the retailer is required to register with Maine Revenue Services. Having any other type of substantial physical presence in this State requires registration except for certain exclusions discussed below. Operating or maintaining a store, warehouse, office or repair facility, for instance, establishes a physical presence, or nexus, in the State. If the retailer does no more than solicit sales by means of a catalog mailed into the State and the goods are delivered by common carrier or the US mail, registration is not required.

b. An employee solicits retail sales in Maine for use storage or other consumption in Maine. An out-of-state retailer could also be subject to registration requirements even if no real property is maintained in this State. If an employee travels within the State, soliciting sales, registration is required. Persons who act as representatives, solicitors, salespersons or independent selling agents establish nexus for the principal. For instance, if an independent selling agent promotes the retailer's product by conducting home parties or by using the retailer's catalog to solicit sales, the principal is required to be registered.

c. Substantial physical presence in Maine. If an out-of-state retailer has a substantial physical presence in Maine, sufficient to satisfy the requirements of the due process and commerce clauses of the United States constitution, registration is required. Due process is satisfied if a business has purposefully availed itself of the benefits of Maine's market, and has established sufficient minimum contacts with Maine to satisfy traditional notions of fair play and substantial justice. The requirements of the commerce clause are that the tax (1) is applied to an activity with a substantial nexus with Maine, (2) is fairly apportioned, (3) does not discriminate against interstate or foreign commerce, and (4) is fairly related to the services provided by the State.

Generally, if an out-of-state retailer makes itself available within Maine to conduct any part of its business, a substantial physical presence exists and registration is required. Some examples of such activities, other than those activities previously discussed, are (and this list is not all-inclusive):

- | Delivery by the retailer into Maine by means of the retailer's own vehicles.
- | Delivery by the retailer into Maine by means of a 3rd party carrier other than an interstate common carrier.
- | Repairs or installations by the retailer's own employees or by a third party contracted by the retailer.

The statute provides exclusions for certain activities which, by themselves, would not require retailer registration. They are:

- | Solicitation of business in Maine through catalogs, flyers, telephone or electronic media when delivery of ordered goods is effected by the US mail or by an interstate 3rd-party common carrier.
- | Attending trade shows, seminars or conventions in Maine
- | Holding a meeting of a corporate board of directors or shareholders or holding a company retreat or recreational event in Maine
- | Maintaining a bank account or banking relationship in Maine
- | Using a vendor in Maine for printing, drop shipping or telemarketing services

d. Leasing of tangible personal property located in this State. If an out-of-state business is engaged in the leasing of tangible personal property within Maine and also makes retail sales to Maine customers, the business is required to register. A lessor is engaged in making retail sales when the lessor executes a "lease in lieu of purchase", or accepts a lessee's option to purchase or sells previously rented property. If a lessor is engaged in any of these types of transactions, the lessor is required to register with the State and collect tax on retail sales.

2. VOLUNTARY REGISTRATION

If an out-of-state retailer does not fall into any of the above-mentioned activities, there is no requirement to be registered. The statute, however, provides for voluntary registration of businesses not subject to mandatory registration. 1756 provides for the option of limiting the liability of voluntary registrants to tax actually collected. In order to take advantage of this provision, the business must make it clear in its application that registration is being made voluntarily under §1756.

3. ADDITIONAL INFORMATION.

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law faced by your business. It is not intended to be all inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to the:

**MAINE REVENUE SERVICES
SALES/EXCISE TAX DIVISION
P.O. BOX 1065
AUGUSTA, ME 04332-1065
TEL: (207) 287-2336
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ATTACHMENT #1
Excerpts taken from 36 M.R.S.A.

36 §1752. Definitions

10. Retailer. "Retailer" means any person who makes retail sales or who is required to register by section 1754-A or 1754-B or who is registered under section 1756.

11. Retail sale. "Retail sale" means any sale of tangible personal property in the ordinary course of business for any purpose other than for resale, except resale as a casual sale, in the form of tangible personal property. "Retail sale" also means any sale of a taxable service in the ordinary course of business for any purpose other than for resale, except resale as a casual sale.

13. Sale. "Sale" means any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration and includes leases and contracts payable by rental or license fees for the right of possession and use, but only when such leases and contracts are deemed by the State Tax Assessor to be in lieu of purchase.

17. Tangible personal property. "Tangible personal property" means personal property that may be seen, weighed, measured, felt, touched or in any other manner perceived by the senses, but does not include rights and credits, insurance policies, bills of exchange, stocks and bonds and similar evidences of indebtedness or ownership. "Tangible personal property" includes electricity. "Tangible personal property" includes any computer software that is not a custom computer software program.

17-A. Taxable service. "Taxable service" means:

- A. Rental of living quarters in any hotel, rooming house, tourist or trailer camp;
- B. Rental, for a period of less than one year, of an automobile;
- C. Telephone or telegraph service;
- D. Extended cable television service;
- E. Fabrication services;
- G. Rental of video tapes and video equipment; and
- H. Rental or lease of an automobile.

36 §1754-B. Registration of sellers

1. Persons required to register. The following persons, other than casual sellers, shall register with the assessor and collect and remit taxes in accordance with the provisions of this Part:

A. Every seller of tangible personal property or taxable services, whether or not at retail, that maintains in this State any office, manufacturing facility, distribution facility, warehouse or storage facility, sales or sample room or other place of business;

B. Every seller of tangible personal property or taxable services that does not maintain a place of business in this State but makes retail sales in this State or solicits orders, by means of one or more salespeople within this State, for retail sales within this State;

C. Every lessor engaged in the leasing of tangible personal property located in this State that does not maintain a place of business in this State but makes retail sales to purchasers from this State;

D. Every consignee, agent or salesperson that makes retail sales in this State of tangible personal property or taxable services on behalf of a principal that is outside of this State if the principal is not the holder of a valid registration certificate;

E. Every agent, representative, salesperson, solicitor or distributor that receives compensation by reason of sales of tangible personal property or taxable services made outside this State by a principal for use, storage or other consumption in this State;

F. Every person that manages or operates a hotel, rooming house or tourist or trailer camp in this State or collects or receives rents from a hotel, rooming house or tourist or trailer camp; and

G. Every seller of tangible personal property or taxable services that has a substantial physical presence in this State sufficient to satisfy the requirements of the due process and commerce clauses of the United States Constitution. The following activities do not constitute a substantial physical presence for the purpose of this paragraph:

(1) Solicitation of business in this State through catalogs, flyers, telephone or electronic media when delivery of ordered goods is effected by the United States mail or by an interstate 3rd-party common carrier;

(2) Attending trade shows, seminars or conventions in this State;

(3) Holding a meeting of a corporate board of directors or shareholders or holding a company retreat or recreational event in this State;

(4) Maintaining a bank account or banking relationship in this State; or

(5) Using a vendor in this State for printing, drop shipping or telemarketing services.

2. Registration certificates. Application forms for sales tax registration certificates must be prescribed and furnished free of charge by the assessor. The assessor shall issue a registration certificate to each applicant that properly completes and submits an application form. A separate application must be completed and a separate registration certificate issued for each place of business. A registration certificate issued pursuant to this section is nontransferable and is not a license within the meaning of that term in the Maine Administrative Procedure Act.

When a retailer maintains a place of business in this State, the registration certificate must be conspicuously displayed at that place of business. In the case of a retailer that does not have a fixed place of business and makes sales from one or more motor vehicles, each motor vehicle constitutes a place of business.

3. Penalties. A person that is required by this section to register as a retailer with the assessor and that makes retail sales in this State without being so registered commits a Class E crime. When a person's sales tax registration certificate has been revoked by the assessor pursuant to section 1757, that person commits a Class D crime by continuing to make retail sales in this State.

36 §1756. Voluntary registration

Every seller of tangible personal property or taxable services, not required by 1754 to register, may register upon such terms as the State Tax Assessor may prescribe. Upon registration, he shall have the rights and duties of a person required to be registered and shall be subject to the same penalties, except that his liability may be limited to tax actually collected. The person so registered may at any time surrender his registration certificate and request that the same be canceled. Upon receipt of such certificate and request, the State Tax Assessor shall grant the same, if it appears to the State Tax Assessor that the registrant has satisfied all liability to the State and that he is not required by law to register. Upon surrender of his certificate, the registered person shall cease to collect sales or use taxes upon sales taking place on and after the date of such surrender.

36 §1811. Sales tax

(TEXT EFFECTIVE 7/1/00) A tax is imposed on the value of all tangible personal property and taxable services sold at retail in this State. The rate of tax is 7% on the value of liquor sold in licensed establishments as defined in Title 28-A, section 2, subsection 15, in accordance with Title 28-A, chapter 43; 7% on the value of rental of living quarters in any hotel, rooming house, tourist or trailer camp; 10% on the value of rental for a period of less than one year of an automobile; 7% on the value of prepared food sold in establishments that are licensed for on-premises consumption of liquor pursuant to Title 28-A, chapter 43; and 5% on the value of all other tangible per-

sonal property and taxable services. Value is measured by the sale price, except as otherwise provided. [1999, c. 401, Pt. X, §1 (amd); §5 (aff).]

The tax imposed upon the sale and distribution of gas, water or electricity, or telecommunications services, by any public utility, the rates for which sale and distribution are established by the Public Utilities Commission, must be added to the rates so established. No tax may be imposed upon the sale or use of electrical energy, or water stored for the purpose of generating electricity, when the sale is to or by a wholly owned subsidiary by or to its parent corporation, except for electrical energy or water purchased for resale to or by such wholly owned subsidiary. [1999, c. 488, §11 (amd).]